

Planning Board Meeting

Minutes of April 18, 2001

Approved 05-02-01

The meeting was called to order by Chairman Robert White at 6:35pm at the Harpswell Community TV Studio, Community Drive, Great Island. White then introduced the other members present: James Henderson, Roland Weeman, Linda Toothaker, John Papacosma, and associate member Howard Nannen, whom White said could discuss the issues before the Board and second motions, but could not vote this evening as all Board members were present. Contracted planner Tony Dater and Codes Enforcement Officer (CEO) Douglas Webster were also present. The meeting was taped, and broadcast live on the Harpswell Community TV station.

Minutes of March 21, 2001 were reviewed. Regarding the motion by Henderson, "I make a motion that the Planning Board finds that the proposed exit off Rt.123 is an acceptable proposal as part of the proposed subdivision and we will communicate to the Maine Department of Transportation that the Planning Board has no objections to issuing a permit.", Henderson said, "It's an approval of the road proposal, not that part of the plan. The Board didn't decide the civil issue. This motion didn't constitute an approval." The minutes of March 21, 2001 were accepted as written, with the motion by Henderson, seconded by White. **Approved, 5-0.**

The published agenda for the meeting was: (1) C R Rooney, L.L.C., Site Plan Review, Tax Map 13-9, Harpswell Neck Road, Harpswell (Return from 03/21/01 meeting). (2) Donald and Roberta Robertson, Reconstruction of Non-Conforming Structure, Shoreland Residential, Tax Map 30-40, Robertson Road, Orr's Island, Harpswell (Return from 03/21/01 meeting). (3) Frank Kibbe, Great Wings Marine, L.L.C., Site Plan Review, Shoreland Business, Tax Map 48-48, Harpswell Islands Road, Harpswell. (4) Envision Realty, L.L.C., Subdivision Plan Review, Tax Map 1-3, Shoreland Residential, Skolfield Farm Shores, Harpswell (Return from 03/21/01 meeting).

C R Rooney, L.L.C. – Mr. Rooney presented his request to amend his previously approved site plan from approximately a year ago, to add a 54' X 90' cold storage building. He presented his amended site plan to the Board and the public. The building will have seasonal water and electricity. Henderson said that screening was to have been put into place (since the site plan had been approved last time). Rooney had planted some trees and said that he would be planting larger trees. Rooney said that people would be able to work on their own boats in the proposed building and that it would be used for storage. The building will not have a concrete floor.

Nannen asked Rooney how he would monitor the chemicals other people would be using in the building. Rooney said each boat owner would be required to sign a contract which would contain regulations concerning the chemicals used, and that he would monitor the activities of the boat owners. Papacosma voiced concern about the boat owners washing petroleum products off of their boats, which may in turn harm the wetlands. Rooney said that he would not promote the washing of their boats, and that if there was an oil spill, it could and would be taken care of.

White asked for public comment, and Mrs. Overall, an abutter, asked the Board if the terrain required for the proposed building would be the same as for the other building on the old plan. Rooney said yes and that he would mainly use the new proposed building for storage. Mrs. Overall wanted to know if Rooney would be taking down any more trees between their properties. Rooney said, "I'll be taking down very few between us."

White closed the public hearing, and the Board reviewed the proposed site plan and Planner Tony Dater's March 14, 2001 memo. Dater said, "Everything is covered." The DEP regulations letter was in Rooney's last site plan review application.

The Board reviewed Rooney's present application for conformance to the Site Plan Review Ordinance (SPRO) and notable points of the discussion follow: 15.3.1.1- There will not be additional trips except for seasonal traffic; 15.4- Access will be the same; 15.11 – Weeman said there is no groundwater pollution; and 15.14.2 – There is a natural buffer. Dater asked the Board if they thought Rooney should submit a new, updated letter from the solid waste company, since the latest letter is dated September 2000. Weeman said a condition of approval should be that Rooney provide an updated letter. Weeman said, "I make a motion that we approve C R Rooney, L.L.C.'s submission, Tax Map 13-9, Harpswell Neck Road, for a cold storage building, as a complete application with the following conditions: 1. Best Management Practices must be followed by the owner, and 2. The Town must have an updated copy of the waste hauler contract." Henderson seconded. Nannen said that the Board needs to abide by SPRO 15.16 and he read 15.16.1. He said that he thought a concrete floor would be better. He asked for an assurance from Rooney that there would be no contamination and that the others would be following the Best Management Practices. Rooney said, "We will be keeping an eye on them." Weeman said there are adequate facilities on the site. Henderson said the CEO could take a look at the site from time to time. Papacosma said, "There should be education and we all should be sensitive. Stuff doesn't just go away." Henderson stated, "I propose as a further condition for the plan's continued approval, that the owner comply with 15.16, paragraphs 1 through 3, and that if in the opinion of the CEO, as a result of an annual inspection, these activities result in a violation of this ordinance and that the Best Management Practices are not being followed, that this be brought back to the Planning Board so it may see if the Board should reconsider its approval." Papacosma seconded. **The motion carried, 5-0.**

Robertson- Roberta Robertson presented their application. They have five grandchildren and it is difficult for them all to fit into their present cottage. She said that James Herrick, architect, has been working with them and has pointed out things that they need to conform to. She asked Mr. Herrick to speak for them.

Herrick said that he has been helping the Robertsons plan the project and they are intending to tear down the old building and build a new house. He presented the proposed site plan to the Board and the public. Herrick said that there will be a 75' setback from the High Water Mark, 25' sideline setbacks, and the house will be below the 30% expansion requirement. He said there will be two stories, and a screened deck. There will be one septic system, designed by William H. Maier, to be shared with the house on the lot in back of the property, which the Robertsons also own. Herrick presented a letter from Mr. Maier, which stated that the septic system would comply with all State standards.

White said the Board needs the application form for the septic system (HHE-200 form) from the septic designer stating that it is an appropriate septic system. Weeman said that the Board needs the setbacks and the dimensions of the new building on the plans, and the sketches. Weeman stated that the applications would not be approved until the Board has these items. Nannen wanted to know why the whole structure couldn't be set back behind the 75' setback. Henderson asked Herrick to write a brief review regarding why the applicants and Herrick thought it wouldn't be practical to move it 75' back from NHW. Papacosma requested that the contour lines and elevations be noted on the plan. White told the applicants to return to the next meeting, which the Board determined would be on May 2, 2001, with the required items.

Frank Kibbe, Great Wings Marine, L.L.C.- Frank Kibbe said that this is a request to renew his 1994 approved permit. He has maintained his Army Corp of Engineers permit, but the Town permit has lapsed. He is requesting a renewal of the Town permit to extend his existing docks and to create larger slips due to increasing boat sizes. Kibbe said there would be no new slips constructed. Kibbe presented copies of the approved 1994 permit to the Board. He has 30 moorings now. The four moorings off the docks are being moved to the outer part of the cove. Kibbe said he will be asking for ten additional moorings next month.

White asked for public comment. Paul Deheis said that he will be owning the two lots across the cove, now lot #72 on the Town Tax Map, on Tondreaus Point. He said, "It's an important issue for all of us who live there." White told him that the hearing on the docks and moorings will be held on Friday, April 20th. Kibbe submitted an easement from Robert Small, abutter, regarding Kibbe's septic system. Kibbe said that he will be replacing the existing septic system at some point in the future and his system will be located entirely on the boatyard property.

The Board reviewed the application for completeness referencing the Site Plan Review Ordinance (SPRO) 14 and notable points of discussion follow: 14.1.2- The floats will be extended 25' to the East and 75' to the North; 14.1.9 - Waiver requested. Henderson made a motion that the Board approve the conditions of the waiver of SPRO 14.1.9. Weeman seconded. **Carried, 5-0;** 14.1.10- Kibbe will bring the letter of evidence of the applicant's technical and financial capability to carry out the project, as required by 14.1.10, to the Town office for inclusion in the applicant's file; 14.2.2 - Waiver requested. Weeman made a motion that the Board waive the requirements of 14.2.2 based on the fact that there is an easement of riparian rights. Henderson seconded. **Carried, 5-0;** 14.2.3-Waiver requested. Kibbe submitted a copy of the proposed septic system to the Board. Henderson made a motion that the Board waive the requirements of 14.2.3 for the existing sewer because a new one will be built. Weeman seconded. **Carried, 5-0;** 14.2.9- Kibbe explained the direction of drainage; 14.3.2- Waiver request. White said that the Board will accept the applicant's topography map; and 14.3.13 - Waiver requested. Henderson made a motion that the Board waive the requirements of 14.3.13. Weeman seconded. **Carried, 5-0.**

The Board reviewed SPRO 15 (Approval Standards and Criteria): Regarding 15.9, Dater said that the applicant needs to keep all parking away from the shore and not encroach on the vegetation. Kibbe stated, "I guarantee we won't encroach." Dater also stated that the mooring expansion will be an intensification of use. White said Kibbe would have to use Best

Management Practices regarding hazardous waste. To satisfy 15.21, Kibbe will take a letter of financial capability to the Town office to be placed in his file. Nannen read 15.12.6 regarding two or more lots requiring a homeowner's association. White said that the septic system is owned in common by both property owners. Weeman stated, "I move that we approve the site plan of Great Wings Marine, L.L.C., Tax Map 48-48, Harpswell Islands Road, with the condition that we secure a signed letter of financial capacity." Henderson seconded. **Carried, 5-0.**

Envision Realty, L.L.C.- White read Barbara Barton's letter, dated February 16, 2001, into the record, and said, "These are legitimate concerns." He also said that Roland Mayo, Anne Heinig, John Loyd, Jr., Esq., and Andrews Campbell, Esq. had written letters to the Board. White told Andrews Campbell, Esq. that as soon as information becomes available to us in the Town office, it will be available to him. Town of Harpswell Attorney for this application, John C. Bannon, said that as long as the information was available at the Town office during open hours, that was sufficient.

White said that the Board has retained Dr. Nathan Hamilton, archeologist, to conduct a Phase I Archeological Study. Henderson said that he had reached Dr. Hamilton's office and had been told that he had a family emergency. Henderson said that the Board is moving in good faith regarding this issue.

The Board reviewed Dater's April 11, 2001 memo: (1) Regarding draft maps – The Board is requesting that Envision Realty, L.L.C. put the revisions and the dates of each revision on the plans they submit. (2) Linda Lee Barton has submitted a map on which she identified all of the wetlands and dumps, as the Board had requested. White said that the Board has still not site visited all of the wetlands. (3) Envision Realty, L.L.C. has removed the guesthouses from Sections A and I of their homeowner covenants. Regarding point #2 of the review for completeness section on Dater's April 11, 2001 memo (wetlands adjacent to proposed lot 8 and the Subdivision Ordinances 9.10's required 250' setback), Henderson stated, "We need to be looking for new factual information...Our attorney can review any legal objections."

The Board reviewed the information they are still requiring as cited in the minutes of the March 21, 2001 meeting: The written statement from the Harpswell Historical Society, regarding any known archeological significances on the proposed subdivision property, is in process. White said the Board has received the rating from Maine Department of Inland Fisheries and Wildlife regarding the wetlands near the proposed subdivision property, and the department has rated the wetlands high value. White said the Board has received a letter from Phil Carey, Brunswick Planner, dated March 26, 2001, and White read part of it. In his letter, Mr. Carey stated that Brunswick has rated the area surrounding the proposed project as high value, and has designated it a Resource Protection area. He stated that Brunswick requires a 250' setback of all structures, septic systems, etc. from this area. White said, regarding the proposed subdivision project, "Whether it's a Resource Protection Zone isn't the point. The State says 250 feet back." Henderson said that Richard Baker of the Department of Environmental Protection has sent a letter to the Board, dated April 6, 2001, stating that, "The State of Maine Guidelines for Municipal Shoreland Zoning Ordinances lists, as areas to be zoned for Resource Protection, "areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with great ponds and rivers, which are rated

“moderate “or “high” value by the Maine Department of Inland Fisheries and Wildlife as of January 1, 1973. If these areas are not significantly developed, the Department expects that the municipality will include them within the Resource Protection District.” Nannen read part of page two of Baker’s letter which states, “If the area adjacent to the proposed subdivision is not zoned for Resource Protection, but is of moderate or high value, I believe the planning board can take that into consideration as it reviews the proposal.”

Regarding point #6 of the information required by the Board, CEO Douglas Webster said that he had met with Mr. DuBois on the proposed subdivision site to determine the maximum level of the high tide. He said the issue relates to the Shoreland Zoning Ordinance’s Normal High Water mark. He stated that there are two issues, (1) the maximum high tide level and its relation to the land, and (2) the definition of the NHW line in reference to predominant vegetation, which he couldn’t look at due to snow cover. Webster wants to see if the vegetation is there, and if it concurs. He also said that the setback increases if the slope of the land increases. He will go out to the site and measure from that point back to see if the slope is 20%. Weeman said that the proposed subdivision road would need to be built up in the area of the gully.

Dater asked Webster and Bannon how SZO 15.8 (roads) relates to Subdivision Ordinance 9.10 (Impact on Wetlands). Dater asked that, since the Subdivision Ordinance is the stricter of the two, shouldn’t the provision apply? Webster said that the stricter provision applies “wherever possible”. He said that “wherever possible” is the determination of the Planning Board (according to the Site Plan Ordinance), while the CEO decides according to the Shoreland Zoning Ordinance. Webster said he needs to determine what is considered the edge of the road. He will talk to the State about the definition of “traveled way” and the State’s determination in similar cases involving municipalities. Bannon said he agreed with Webster, that the CEO decides, according to the SZO, if there are any alternatives, and the Board decides, according to the Sub. Ord., if it is possible to build a road outside of the 75’ setback. He said the applicants must show that it is not possible.

Weeman said that the Board needs to deal with the wetland setback as it relates to Sub. Ord. 9.10. White referenced an Inland Fisheries and Wildlife map showing the areas around the proposed subdivision to be of high value. White said that if that is true, then all structures, septic systems, etc. will need to be set back 250’ from those areas, according to Sub. Ord. 9.10. Nannen stated, “It is very important to determine if it’s high value...That has a tremendous impact on this proposal!” Henderson asked if the Board should decide from the referenced IF&W map and Nannen responded, “Is this an accurate document?” Bannon said that the Board was correct in identifying that it is okay to determine the 250’ setback, and that the Board is within its discretion to look further. Nannen asked for a clarification from IF&W that their map is accurate. The Board and Bannon discussed how to word a motion regarding the issue. Weeman stated, “I make a motion that the Board charge Jim Henderson with the responsibility of taking the wetland map directly to Inland Fisheries and Wildlife to get a determination from them, and to ask, ‘Does the shore of the proposed project abut coastal wetlands and are they of high or moderate value?’” Nannen seconded. **Carried, 5-0.** The Board asked Selectman George Swallow to use Aerial Survey data to pinpoint the Geographic Information Systems (GIS) points on the IF&W map and the proposed development property. Continuing on with the items requested by the Board as contained in the minutes of March 21, 2001, White said that

Envision Realty, L.L.C. has removed the guest houses from their homeowner covenants, and Envision Realty, L.L.C. has submitted a revised page four of the covenants to the Board. White asked for a complete corrected copy of the covenants. The Board discussed whether or not a homeowners association would be required. Henderson stated, "I would move that concerning should there be a homeowners association, we require a homeowners association." Nannen seconded. **Carried 3-2 (Weeman and Toothaker – No).** Dater told the Board that if Envision Realty, L.L.C. is given a waiver for Subdivision Ordinance 9.8.1 (concerning power lines), the lines could stay up. The Board reviewed the proposed subdivision plan for CMP information. Weeman read a letter from CMP distribution and engineering dated January 20, 2001. He said that the Subdivision Ordinance deals with the location of the utilities. White said that the CMP line is entirely on Envision Realty, L.L.C.'s property. Henderson did not think there was a need for a waiver (9.8.1) and Weeman agreed, stating, "They are putting it underground."

Nannen asked Bannon for his opinion on the civil dispute over the driveway. Bannon said, "The Board can't resolve private property disputes. You have to find that the applicant has provided evidence, that you would be willing to believe, that they have a right to put the road there. As long as they can show a deed, adverse possession, etc., it's up to the Board to accept that... You don't have to decide if they have possession. The Board decides if they have a right to put a road in there... Safety issues are always in the Board's purview. You can decide this as a safety issue... As long as you have the evidence that they own it... You don't have to declare anything as to if it infringes on the Bartons' property." Papacosma wanted to know that if the applicant has a survey, do they have a right to do what they propose to do? Bannon said, "If that plan shows it's on Envision's property, that's all you need." DuBois said the center of the road is on level ground. Henderson said the Board needs to rely on legal counsel. Nannen said, "We're on hold at this point." Weeman stated that he could not coordinate the Owen Haskell survey with how it relates to this plan (Envision Realty, L.L.C.'s plan). He asked DuBois how he got his distances. DuBois said he thought everything was all right, but that he would look into the issue and get back to the Board.

Henderson asked if the Board could table a decision on the application. Bannon said that the Board had already given preliminary approval of the plan and that they had until April 21st to make a decision, unless they had an agreement with the applicant to extend. Tony Blair of Envision Realty, L.L.C. said they agreed to give the Board more time and they would return to the May 16, 2001 Planning Board meeting. Weeman said that the cutoff date for new material to be submitted to the Board is May 9th. Henderson made a motion to adjourn the meeting, White seconded, and it carried **5-0**. The meeting adjourned at 10:55pm.

Respectfully submitted,

Debora A. Levensailor
Harpswell Planning Assistant